

1 Robert A. Mittelstaedt (State Bar No. 60359)
2 ramittelstaedt@jonesday.com
3 Craig A. Waldman (State Bar No. 229943)
4 cwaldman@jonesday.com
5 David C. Kiernan (State Bar No. 215335)
6 dkiernan@jonesday.com
7 Lin W. Kahn (State Bar No. 261387)
8 linkahn@jonesday.com
9 Peter A. Julian (State Bar No. 277673)
10 pjulian@jonesday.com
11 JONES DAY
12 555 California Street, 26th Floor
13 San Francisco, CA 94104
14 Telephone: (415) 626-3939
15 Facsimile: (415) 875-5700

16 Attorneys for Defendant
17 Adobe Systems Inc.

18 [Additional counsel listed on signature page]

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22
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: April 8, 2013
Time: 10:00 a.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

The parties submit this joint statement for the April 8, 2013 Case Management Conference setting forth proposed changes to the case schedule in ECF 282. This proposed schedule achieves the April 2014 trial date noted by the Court at the March 13 CMC while providing time for supplemental expert reports and briefing in light of the schedules of the parties and their experts, and the significance of the issues.

Plaintiffs' Supplemental Expert Reports and	
Supplemental Class Certification Brief:	May 17, 2013
Defendants' Supplemental Expert Reports and	
Supplemental Opposition:	June 28, 2013
Plaintiffs' Supplemental Reply Brief:	July 19, 2013
ADR:	by July 26, 2013
Hearing on Class Certification:	August 9, 2013
Plaintiffs' opening expert reports:	October 15, 2013
Defendants' expert reports:	November 12, 2013
Plaintiffs' reply expert reports ¹ :	November 26, 2013
Expert discovery cutoff:	December 6, 2013
Rule 56/related <i>Daubert</i> Motions:	December 20, 2013
Oppositions:	January 24, 2014
Replies:	February 14, 2014
Hearing on Rule 56/related <i>Daubert</i> motions:	February 28, 2014
Pretrial Conference:	April 17, 2014
Trial:	April 29, 2014

The only issue on which the parties disagree is whether plaintiffs may submit a reply expert report on class certification when they file their supplemental reply brief.

¹ By agreement, reply reports must be limited to true rebuttal and should be very brief. They should not add new material that should have been placed in the opening report.

1 **Plaintiffs'** position is as follows: Defendants oppose allowing Plaintiffs to respond to
2 criticisms of their amended expert opinions. Plaintiffs respectfully submit that this makes no
3 sense. If in their Supplemental Opposition Defendants raise new expert criticisms, Plaintiffs
4 believe they should be allowed to submit an expert response addressing them. Plaintiffs strongly
5 disagree with Defendants' characterization of their prior expert rebuttal report. The rebuttal
6 merely responded to Defendants' expert's criticisms, including by showing with data why they
7 were unfounded. This is the purpose of rebuttal, lest the Court be left with the erroneous
8 impression that the criticisms could not be answered..

9 **Defendants'** position is that five rounds of expert reports on class certification will be
10 enough and that a sixth round – which would be the fourth report by Dr. Leamer – is unnecessary
11 and inconsistent with this Court's approach.

12 At the October 26, 2011 CMC, the Court explained to plaintiffs, using damages as an
13 example: "You do the opening report, they do the rebuttal, you'll get to do depositions of each
14 other's experts." (Dkt. 94 at 67:10-12.). This approach, without reply reports, makes sense for the
15 class certification issues, especially given the three rounds that have already occurred and the two
16 additional rounds requested by the Court. Last time, plaintiffs submitted a 66-page "reply" report
17 by Dr. Leamer which contained another regression analysis that defendants did not have an
18 opportunity to respond to. This time, any regressions or other statistical analyses that Dr. Leamer
19 believes are appropriate should be included in his upcoming report and not saved for a reply
20 report to which defendants cannot respond.

21 At the CMC on March 13, 2013, the schedule outlined by the Court provided for only two
22 rounds of additional expert reports: an amended report by plaintiffs and a rebuttal report by
23 defendants, with no reply report by plaintiffs. Tr., 3/13/13 CMC, 9:23-9:18. Defendants'
24 proposal follows that approach.

1 Dated: April 8, 2013

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

2
3
4 By: /S/ Kelly M. Dermody
Kelly M. Dermody

5
6 Richard M. Heimann (State Bar No. 63607)
Kelly M. Dermody (State Bar No. 171716)
7 Eric B. Fastiff (State Bar No. 182260)
Brendan Glackin (State Bar No. 199643)
8 Dean Harvey (State Bar No. 250298)
Anne B. Shaver (State Bar No. 255928)
9 275 Battery Street, 29th Floor
San Francisco, California 94111-3339
10 Telephone: 415.956.1000
Facsimile: 415.956.1008

11 *Interim Co-Lead Counsel for Plaintiff Class*

12
13 Dated: April 8, 2013

JOSEPH SAVERI LAW FIRM

14
15 By: /S/ Joseph R. Saveri
16 Joseph R. Saveri

17 Joseph R. Saveri
18 Lisa J. Leebove
James G. Dallal
255 California St., Ste. 450
19 San Francisco, CA 94111
Telephone: (415)500-6800
20 Facsimile: (415)500-6803

21 *Interim Co-Lead Counsel for Plaintiff Class*

22 Dated: April 8, 2013

JONES DAY

23
24 By: /S/ Robert A. Mittelstaedt
Robert A. Mittelstaedt

25 Robert A. Mittelstaedt
26 Craig A. Waldman
David C. Kiernan
27 Lin W. Kahn
Peter A. Julian
555 California Street, 26th Floor
28 San Francisco, CA 94104
Telephone: (415) 626-3939; Facsimile: (415) 875-5700

1
2 Dated: April 8, 2013

O'MELVENY & MYERS LLP

3
4 By: /S/ Michael F. Tubach
Michael F. Tubach

5 George Riley
6 Michael F. Tubach
7 Christina J. Brown
8 Two Embarcadero Center, 28th Floor
9 San Francisco, CA 94111
10 Telephone: (415) 984-8700
11 Facsimile: (415) 984-8701

12 *Attorneys for Defendant APPLE INC.*

13
14 Dated: April 8, 2013

KEKER & VAN NEST LLP

15 By: /S/ Daniel Purcell
16 Daniel Purcell

17 John W. Keker
18 Daniel Purcell
19 Eugene M. Page
20 Paula L. Blizzard
21 710 Sansome Street
22 San Francisco, CA 94111
23 Telephone: (415) 381-5400
24 Facsimile: (415) 397-7188

25 *Attorneys for Defendant LUCASFILM LTD.*

1 Dated: April 8, 2013

JONES DAY

2
3 By: /S/ Robert A. Mittelstaedt
Robert A. Mittelstaedt

4 Robert A. Mittelstaedt
5 Craig E. Stewart
555 California Street, 26th Floor
6 San Francisco, CA 94104
Telephone: (415) 626-3939
7 Facsimile: (415) 875-5700

8 Catherine T. Zeng
1755 Embarcadero Rd.
9 Palo Alto, CA 94303
Telephone: (650) 739-3939
10 Facsimile: (650) 739-3900

Attorneys for Defendant INTUIT INC.

11 Dated: April 8, 2013

MAYER BROWN LLP

12
13 By: /S/ Lee H. Rubin
14 Lee H. Rubin

15 Lee H. Rubin
Edward D. Johnson
16 Donald M. Falk
Two Palo Alto Square
17 3000 El Camino Real, Suite 300
Palo Alto, CA 94306-2112
18 Telephone: (650) 331-2057
Facsimile: (650) 331-4557

19 *Attorneys for Defendant GOOGLE INC.*

20 Dated: April 8, 2013

BINGHAM McCUTCHEN LLP

21
22 By: /S/ Frank M. Hinman
23 Frank M. Hinman

24 Donn P. Pickett
Frank M. Hinman
25 Three Embarcadero Center
San Francisco, CA 94111
26 Telephone: (415) 393-2000
Facsimile: (415) 383-2286

27 *Attorneys for Defendant INTEL CORPORATION*

1 Dated: April 8, 2013

COVINGTON & BURLING LLP

2
3 By: /S/ Emily Johnson Henn
Emily Johnson Henn

4 Robert T. Haslam, III
5 Emily Johnson Henn
333 Twin Dolphin Drive, Suite 700
6 Redwood City, CA 94065
Telephone: (650) 632-4700

7 *Attorneys for Defendant PIXAR*

8
9 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that
10 concurrence in the filing of this document has been obtained from all signatories.

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